

## REMARKS

This application has been reviewed in light of the Office Action marked Final, dated February 8, 2005. Claims 1, 3-11, 30-33, 37, and 39-45 are presented for examination. Claims 33 and 45 have been amended to define more clearly what Applicants regard as their invention. Claims 1, 10, 11, 33, 37, and 45 are in independent form. Favorable reconsideration is respectfully requested.

Initially, Applicants wish to thank the Examiner for acknowledging that Claims 1, 3-11, 30-32, 37 and 39-44 have been allowed.<sup>1</sup>

Claims 33 and 45 have been rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,452,701 ("*Terahara*") in view of U.S. Patent No. 6,108,113 ("*Fee*").

Claim 33 recites, in a wavelength division multiplexed optical communication system having an optical path through which optical communications normally are communicated, at least one optical node. The node comprises a transmitting portion, arranged to transmit a generated test signal through the optical path by selectively outputting an error frame or a valid frame as the test signal. The at least one optical node further includes a receiving portion, arranged to receive the test signal from the transmitting portion through the optical path, and to monitor a quality of the test signal received through the optical path by measuring a bit error rate. The optical path includes at least one loopback mechanism, which directs the generated test signal

---

<sup>1</sup> In the Office Action, the Summary page and on page 6 under the heading "Allowable Subject Matter," it is indicated that Claim 34 has been allowed. However, Claim 34 was previously cancelled in the Amendment filed on September 20, 2004.

transmitted by the transmitting portion towards the receiving portion.

Claim 33 has been amended to recite that the transmitting portion, transmits the generated test signal through the optical path by selectively outputting an error frame or a valid frame as the test signal. These features also appear in the allowed independent claims.

*Terahara* relates to a supervisory system in a wavelength division multiplexing communications network. In this system, a first terminal station transmits a supervisory signal to a second terminal station. The supervisory signal can be looped-back at the second terminal or at a branch terminal between the two terminals.

However, *Terahara* does not disclose or suggest an optical node having a transmitting portion, arranged to transmit a generated test signal through the optical path by selectively outputting an error frame or a valid frame as the test signal, in the context of Claim 33. As such, Claim 33 is believed to be patentable over *Terahara*.

*Fee* relates to a system for carrying ancillary network data using a sub-carrier modulation signal. In Figure 9, the ancillary data is input to a modulated signal generator, which provides a modulated output signal to be combined with a high bit-rate data signal. According to *Fee*, the ancillary data may carry various types of information, such as link identifiers, wavelength utilization tables, and customer identifiers (see column 13, lines 5-28).

The Office Action cites *Fee* for teaching that the quality of the high-data rate carrier transmission signal can be measured by monitoring the error rate of the received ancillary network data. However, nothing has been found, or pointed out, in *Fee* that would remedy the above-emphasized deficiencies of *Terahara*. As such, Claim

33 is believed to be patentable over *Fee*.

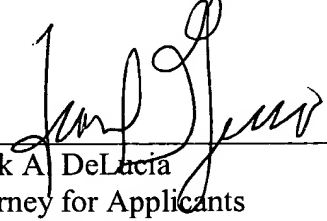
Accordingly, *Terahara* and *Fee* whether considered separately or in combination (assuming such a combination would even be permissible) do not teach or suggest the above mentioned feature of Claim 33. As such, Claim 33 is patentably distinguishable over *Terahara* and *Fee*, whether considered separately or in the combination postulated in the Office Action.

Independent Claim 45 is a method claim that is similar in many relevant respects to Claim 33, and therefore Claim 45 is also believed to be patentable over *Terahara* and *Fee*, whether considered separately or in combination, for the same reasons as is Claim 33.

This Amendment After Final Action is believed clearly to place this application in condition for allowance and, therefore, its entry is believed proper under 37 C.F.R. § 1.116. It is believed that the claim changes made herein would not require any further consideration or search, since they merely involve inserting language which the Examiner examined from other independent claims. In any event, however, entry of this Amendment, as an earnest effort to advance prosecution and reduce the number of issues, is respectfully requested. Should the Examiner believe that issues remain outstanding, it is respectfully requested that the Examiner contact Applicants' undersigned attorney in an effort to resolve such issues and advance the case to issue.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,



Frank A. DeLacia  
Attorney for Applicants  
Registration No. 42,476

FITZPATRICK, CELLA, HARPER & SCINTO  
30 Rockefeller Plaza  
New York, New York 10112-3801  
Facsimile: (212) 218-2200

NY\_MAIN 499638v1